IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3548 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
MARCH 12, 2007.

The matter is part heard and was adjourned to today to enable Shri Chopde, learned counsel who appears for Respondent No.1 to point out the bill dated 12.4.2005 allegedly served on the petitioners prescribing last date of its payment. Today, learned counsel has filed pursis and along with it he has filed copies of said bill dated 12.4.2005 issued to petitioner No.2 – Sou. Aruna Arun Bhatkar and petitioner No.3 – Manikrao Narayan Ingle. Copy of any such bill issued to petitioner No.1 – Bhanudas Haridas Bhatkar is not on record.

On last date of hearing, in view of the copy of bill dated 10.4.2005, it became clear that said bill was not prescribing any last date for payment and hence in view of the Division Bench judgment of this Court in the case of

Rameshwar s/o Ramaji vs. Dilip s/o Tulsiram, reported at 2006(5) Mh.L.J. 292, the order of disqualification could not have been passed on the basis of bill dated 10.4.2005. It is, therefore, apparent that in view of the said Division Bench judgment, writ petition needs to be allowed insofar as petitioner No.1 is concerned.

The bills dated 12.4.2005, of which copies are produced on record reveal that said bills are served upon petitioner No.2 and petitioner No.3 respectively. The learned counsel for the petitioners states that those bills have in fact been served after 25.7.2005 because in the meanwhile there was a resolution of Gram Panchayat by which recovery itself was postponed and hence bills were not served. The learned counsel for respondent No.1 contends that this story has been fabricated later on and there was never any such resolution and recovery of property tax was never postponed.

Shri Thakare, learned AGP appearing for Respondents No. 2 & 3 has also supported the impugned order in this respect.

I have perused the impugned order

and I find that insofar as bill dated 12.4.2005 is concerned, the Collector has considered its service and consequential disqualification of petitioner No.3 – Manikrao Narayan Ingle alone. The Collector has mentioned that bill has been served upon petitioner No.3 and for that purpose he has relied upon the report of Block Development Officer. The material on record does not show that report of Block Development Officer is either perverse or erroneous. The learned counsel for petitioner No.3 has tried to contend that petitioner No.3 has received that bill after 25.7.2005, however, petitioner No.3 has not placed any date below his signature. It was the responsibility and duty of petitioner No.3 to place said date and it is he who stands to gain by not placing said date. In view of this order against petitioner No.3, it calls for no interference. Hence, writ petition as filed by him is dismissed.

Insofar as petitioner No.2 – Sou. Aruna Bhatkar is concerned, the order of the Collector nowhere considers the service of bill dated 12.4.2005 upon her and its non payment as disqualification. It only considers the

service of bill dated 10.4.2005 and its non payment. It is, therefore, apparent that this Court cannot disqualify her for not paying bill dated 12.4.2005 for the first time in writ petition. She must be given due opportunity to meet case against her and that can be done by remanding the matter back to the Collector because the ground in this respect is already raised by Respondent No.1 in his application for disqualification. Therefore, petition to the extent it contains challenge by petitioner No.2 – Sou. Aruna Arun Bhatkar is allowed. The impugned orders disqualifying her are set aside. The matter is remanded to Respondent No.3 – Additional Collector for taking fresh decision in relation to HER disqualification about alleged non payment of bill dated dated 12.4.2005.

Insofar petitioner No.1 is concerned, again his disqualification consequent to alleged service of bill dated 12.4.2005 is not considered by the Additional Collector. Respondent No.1 has not produced any bill dated 12.4.2005 showing that it has been served upon him. There is no plea about service of any such bill and non payment by

him in application under Section 14(h) of Bombay Village Panchayat Act, 1958, by Respondent No.1.

In the circumstances, impugned orders passed against him are quashed and set aside. Writ Petition is disposed of. Rule accordingly. No costs.

JUDGE

*GS.